HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 No. 904 of 2006

Bharat Lal,
S/o Inder Lal,
R/o Village Kayark Barsudi,
(Chandrapuri), Tehsil-Ukhimath,
District-Rudraprayag. .....Applicant

Versus

1. State of Uttaranchal.

2. Sohan Lal, S/o Lumarya Mistari, R/o Village Kayark Barsudi, (Chandrapuri), Tehsil Ukhimath, District Rudraprayag. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Sanjeev Singh, counsel for the applicant and A.G.A. for the State.

2. Present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 19th July, 2005 passed by the IInd FTC/ADJ Haridwar against the applicant in S.T. No. 113/2004 State Vs. Mukesh and others. Further prayer has been made for quashing the entire criminal proceedings against the applicant in S.T. No. 113/2004 State Vs. Mukesh and others pending in the Court of IInd FTC/ADJ, Haridwar.

3. Briefly stated, initially the FIR was lodged on 9th August 2003 by the respondent no. 2 – Sohan Lal against Mukesh Lal, Bharat Lal and Inder Lal. Later on on 27.05.2005 an application under Section 319 of the Code of Criminal

Procedure was filed by the respondent no.2 for summoning the applicant and three others namely Mukesh Lal, Vinod Lal and Inder Lal. The application was allowed on 19.07.2005 and the applicant and one Inder Lal were summoned.

4. Against the said order passed on 19th July, 2005, present petition under Section 482 of the Code of Criminal Procedure has been filed.

5. In ***Gyanendra Singh Vs. State of U.P. and others 2005 CRL. L.J. 2322***, the Apex Court has held that the trial Court is fully empowered to summon the accused after invoking the provisions of Section 319 of the Code of Criminal Procedure. Relevant observations are quoted below:

> 5. *The trial Judge has relied upon judgments of apex Court Smt. Rukhasana Khatoon v. Sakhawat Hussain 2002 (44) ACC 411 : (2002 All LJ 1516) quoted out few lines from the head not and never cared to read the law laid down and apply the same. The trial Judge again relied upon 1999 (38) All Crl C 123 : (1999 All LJ 539 : 1999 Cri LJ 1865) (in the order wrongly typed as 193) and left it by simply quoting few lines from the head note. Both the judgment quoted above show that the trial court was fully empowered to summon the accused after invoking the provisions of Section 319 Cr.P.C. In cases where accused has been named in the FIR but during investigation no charge sheet was filed against him. Such person can be summoned under Section 319 Cr.P.C. by the court if sufficient evidence existed against him. The trial judge no doubt cited the said authority but hardly read or*

duced before it and not the defence of the person who has yet not appeared before the court.

6. The trial court further relied upon a judgment of the single judge of this court Pradeep Kumar v. State of U.P. 2001 (2) All Cri R 1873, in which the judgment of the apex court reported in 2000 (40) All Cri C795 : (Air 2000 SC 1127 : 2000 Cri LJ 1706) was relied upon. This judgment of this court was not a correct law in view of the pronouncement of the apex court in various judgments. The judgment of Pradeep Kumar 9supra) lays down that a person who was earlier named as an accused in the First Information Reprot but not charge sheeted the provisions of Section 319 Cr.P.C. can not be invoked. This authority was cited before Hon. J.C. Gupta, J. in case of Manoj Kumar v. State of U.P. 2001 (43) All Cri C 292 : (2001 All LJ 1959) wherein the law laid down by Hon. J.C. Gupta J and it was referred to a larger bench. The apex court in the case of Smt. Rukhsana Khatoonj (supra) has already held, which is against the judgment of Pradeep Kumar's case."

6. Since the order has been passed under Section 319 of the Cr.P.C. summoning the applicant, I do not find any illegality in the order dated 19th July, 2005 passed by the Additional Sessions Judge F.T.C. Hardwar.

7. Counsel for the petitioner has submitted that the petitioner is an employee at Assam Ministry of Home Affairs, Govt. of India in Special Service Bureau, therefore, no coercive

steps be taken against him otherwise, he shall suffer irreparable loss.

8. In view of the aforesaid averments made in the petition, in case the applicant surrenders, the Presiding Officer shall consider the bail application of the applicant on the very same day so that the applicant may not suffer on account of the service in the Ministry of Home Affairs.

9. Subject to aforesaid observations for grating bail on the same day, the petition filed under Section 482 of the Cr. P.C. lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

15.11.2006
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